PRE-APPEAL BRIEF REQUEST FOR REVIEW

Reconsideration and allowance of the subject application are respectfully requested. Claims 1, 25-30, 32-42 and 44-47 are pending in the application. Claims 1 and 36 are independent.

Claims 1, 25-30, 32-42 and 44-47 were finally rejected under 35 U.S.C. 103(a) as being unpatentable over Kalavade (US 2003/0051041) in view of Takeuchi (US 2003/0134615) and Harnesk (US 2006/0008063), in various combinations with Schlieben (US 2003/0096605) and Brown (US 2003/0112936), for reasons discussed on pages 5-12 of the Office Action. Applicant respectfully traverses all art rejections, for at least the reasons set forth in the previously-submitted responses. The basis for this request for review is an improper combination of the Kalavade and Harnesk references.

Each of independent claims 1 and 36 recite, among others, the features of

"*sending an instruction from said access gateway to said rating element to determine a rate for packets carried between said computing device and said WLAN access network to establish a rate of charge for each of said packets according to a different classification assigned to each of said packets,*" and,

"*sending an instruction from said access gateway to said charging element representing charging details associated with the access of said server by said computing device; said charging details based on said rate.*"

Claims 1 and 36

With respect to the above-reproduced features, the Examiner concedes at page 8 of the Office Action that Kalavade does not satsify "*...said charging details based on said rate.*" The Examiner relies on Harnesk for that feature, as well as for the feature of "*sending an instruction from said access gateway to said rating element to determine a rate for packets...*"

Kalavade describes a Converged Billing/authorization Gateway (CBG) which collects usage information from a router, formats the usage information and sends the information to an operator's existing system. The operator's system then rates the usage information and bills the user. Of note is that no rate is provided to the CBG from the router, and no data of any sort is received at the CBG from the operator's system.

Harnesk describes a control system with a credit account and a rating engine. Harnesk also describes a packet forwarding system (integrated with a router, for example) with a charging policy enforcement point and a token bucket. Harnesk's packet forwarding system manages multiple services for a user by using rating information obtained from the control system.

The Examiner, in relying on Harnesk to provide the above-identified features lacking from Kalavade, asserts that it would be obvious to combine the teachings of Kalavade and Harnesk and that the motivation for doing so "would have been to allow for providing a flexible real-time charging system, whereby signaling between systems is reduced (Harnesk par. 14)." Specifically, the Examiner argues that the reduction in signaling would be between the CBG and operator system of Kalavade. However, as will be argued below, Kalavade teaches away from such a combination, and such a combination would in fact increase signaling.

Applicant refers to the response of June 25, 2008 in which Applicant argued that Kalavade, at paragraph [0232], teaches <u>expressly against</u> the incorporation of a rating element with the CBG. The Examiner responded by asserting that merely because Kalavade teaches "a way" of rating does not mean that he teaches "away." This assertion ignores the actual teaching of Kalavade – Kalavade does not merely teach "a way" of carrying out rating.

Rather, Kalavade expressly teaches against one particular way. In other words, Kalavade is not simply teaching that rating may be carried out by the operator system, but rather is teaching that it may be carried out by the operator system and should not be carried out by the CBG. Therefore, Kalavade does in fact teach "away" from the very combination proposed by the Examiner, and the Examiner has yet to effectively address this argument.

With respect to motivation, the Examiner contends that it would be obvious to provide Kalavade's CBG with rating capabilities, as this would result in reduced signaling between the CBG and the operator system. This contention is flawed, as it ignores an important function of Kalavade's operator system. As also set out at paragraph [0232] of Kalavade, the operator system generates a final bill for the user. Therefore, the CBG must send information to the operator system, whether or not it has been rated. Whether the CBG sends unrated usage information (as encouraged by Kalavade) or rated usage information (as proposed, contrary to Kalavade's teaching, by the Examiner) to the operator system matters little, because the operator system must still receive sufficient information to generate a bill.

In addition, Applicant notes that claims 1 and 36 require an instruction to be sent "*from said access gateway to said charging element ... said charging details based on said rate.*" Kalavade's router in Fig. 9 has been identified by the Examiner as being equivalent to the access gateway. In order to provide the above claim feature, Kalavade's router must obtain a rate from the modified CBG proposed by the Examiner, and then send the required instruction. Clearly, this actually increases traffic between Kalavade's unmodified router and CBG. Thus, the combination of Kalavade and Harnesk is not only unsupported by the Examiner's motivation of reducing signaling between the CBG and the operator system, but also actually causes increased signaling elsewhere, namely

between the CBG and the router. Applicant notes that increased signaling between the packet forwarding system and the control system is precisely what Harnesk was attempting to reduce. In fact, that is the source of the Examiner's motivation to combine the references.

In summary, Applicant submits that the Examiner has not demonstrated that there was motivation to combine the cited references. E.g., In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002). Nor has the Examiner shown that the references suggest the desirability of the combination. In re Fulton, 73 USPQ2d 1141, 1145 (Fed. Cir. 2004) Instead, Kalavade teaches against the very combination suggested by the Examiner, and the claimed motivation for combining the references is unsuitable because the results of the combination directly contradict that motivation.

All remaining claims currently pending are dependant on one of claims 1 and 36, and are therefore believed to be allowable for at least the reasons set out above.

In view of the above remarks, it is believed that this application is now in condition for allowance, and a Notice thereof is respectfully requested.

Applicants' attorney may be reached in our Washington, D.C. office by telephone at (202) 625-3507. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

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